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In the Supreme Court of the United States

OCTOBER TERM, 1941

RALPH W. CREWS, *Petitioner,*
vs. NO. 548
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

ROBERT E. CREWS, *Petitioner,*
vs. NO. 549
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

AMY TRESNER, *Petitioner,*
vs. NO. 550
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

CHARLES CREWS, *Petitioner,*
vs. NO. 551
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

EVERETT J. CREWS, *Petitioner,*
vs. NO. 552
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

MARY WILLIS, *Petitioner,*
vs. NO. 553
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR SIX WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

By ALBERT L. MCRILL,
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Dated August 21, 1941.

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Proposition One: The appeal to the Circuit Court of Appeals was not a proceeding to correct the decision of the Board of Tax Appeals because of a departure from the mandate of the Circuit Court of Appeals but was an appeal to determine the deduction of attorneys' fees as an ordinary business expense, a question not considered by the Circuit Court of Appeals, and did not in any way involve the construction of the mandate of the Appellate Court 12

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PETITION FOR WRITS OF CERTIORARI

To The Honorable Supreme Court of The United States:

Your petitioners, Ralph W. Crews, Robert E. Crews, Amy Tresner, Charles Crews, Everett J. Crews and Mary

Willis, pray that six separate writs of certiorari be issued to review a judgment of the United States Circuit Court of Appeals for the Tenth Circuit dismissing petitioners' petitions to review the decisions of the United States Board of Tax Appeals.

STATEMENT

These cases, six in number and all presenting the same questions for determination, were instituted in the Board of Tax Appeals to determine asserted deficiencies in petitioners' income tax, for the calendar year 1930. Five different opinions were promulgated by the Board (30 B. T. A. 615, 31 B. T. A. 187, 33 B. T. A. 36, 33 B. T. A. 441, 37 B. T. A. 387), and three opinions have been written by the Circuit Court of Appeals (89 Fed. (2d) 412, 108 Fed. (2d) 712, 120 Fed. (2d) 749). The petitions to review were consolidated in the Circuit Court of Appeals and submitted upon the basis of one complete transcript of record in case No. 2197, *Ralph W. Crews* v. *Commissioner of Internal Revenue*, and abbreviated records in the remaining cases, and all the cases were briefed, argued and decided together, with only the record in No. 2197 being printed, and the judgment and mandate entered and issued in the one case was made the final judgment and mandate in each of the other cases (R. 4).

The petitioners were engaged as owners in developing an oil and gas property. On the first appeal to the Circuit Court of Appeals the only issue determined was the gross income from the property. See 89 Fed. (2d) 412. Peti-

tioners claimed deduction as a loss the sum of $514,000.00, the value of certain government bonds held in escrow and stolen before the time for actual delivery to petitioners. The Circuit Court held this sum was no part of the gross income from the property and fixed the gross income at $1,213,456.09. On the second appeal the only issue was whether development expenses should be deducted in determining the net income from the property for depletion purposes. The Circuit Court held that they should be so deducted, following this Court's opinions in *Helvering, Commissioner,* v. *Wilshire Oil Company*, 306 U. S. 628, and *F. H. E. Oil Company* v. *Commissioner*, 307 U. S. 618. In this decision the Circuit Court determined only two questions, the proper depletion allowance and the net income from the property. The mandate directed the Board of Tax Appeals to redetermine the tax liabilities in accordance with the Circuit Court's opinion (R. 18, 19).

An item of $173,000.00 expended by petitioners for attorneys' fees in connection with litigation growing out of the operation of their property was not considered by the Circuit Court of Appeals on either of the two appeals, and the Board of Tax Appeals in its decision from which the second appeal to the Circuit Court was prosecuted expressly reserved passing on that question (R. 75). The cases were therefore remanded to the Board with the matter of attorneys' fees still open.

After the filing of the mandate the parties filed their respective recomputations (R. 21 and 25). The Board set the cases for trial and they came on for hearing before the

Board on the 3rd day of April, 1940. The recomputation submitted by the petitioners accepted the gross income from the property, the depletion allowance and the net income from the property as fixed by the Circuit Court of Appeals and then deducted the attorneys' fees, personal exemptions, etc., reflecting that no tax was due and that petitioners were entitled to refunds. The Commissioner in his recomputation accepted the basic figures fixed by the Circuit Court of Appeals, but, as clearly appears from the recomputation, did not give petitioners a deduction for their attorneys' fees. At the hearing two questions were raised: (1) Whether an item of $177,343.70, rejected income, had been added as additional income of the taxpayers, and (2) whether the attorneys' fees of $173,000.00 had been deducted. After argument the case was submitted on the transcript before the Board (R. 32).

On April 18, 1940, the Board made its decision fixing tax liability against each petitioner and assessing a deficiency. Petitioners filed petitions for review July 5, 1940 (R. 97) and gave notice of appeal (R. 98). The Circuit Court of Appeals, on June 3, 1941, handed down its decision dismissing the petitions for review on the ground that the only question presented by the petitions was whether the Board of Tax Appeals had acted in accordance with the mandate of the Circuit Court of Appeals, and that the petitions were therefore not filed in time, under the provisions of Section 1140(c)(2) of the Internal Revenue Code, 26 U. S. C. A., Section 1140.

A complete statement of facts preceding the setting up

of deficiencies by the Commissioners, out of which grew the issues of gross income from the property, depletion allowance, and net income from the property, is set out in the first two decisions of the Circuit Court of Appeals (89 Fed. (2d) 412, and 108 Fed. (2d) 712).

JURISDICTION

1. The jurisdiction of this Court is invoked under paragraph 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. Code, Tit. 28, para. 347).

2. The decision of the Circuit Court of Appeals was entered on June 3, 1941.

QUESTIONS PRESENTED

1. Did the petitions for review seek merely to correct the decisions of the Board of Tax Appeals so that they would accord with the mandate of the Circuit Court of Appeals and thus render applicable Section 1140(c)(2) of the Internal Revenue Code, 26 U. S. C. A., Sec. 1140?

2. Did the Board of Tax Appeals have authority in computing petitioners' tax to make or refuse deductions allowed by law, so long as such deductions did not violate the mandate from the Circuit Court of Appeals?

3. Did the petitioners have a right of appeal under Section 1142, U. S. C. Supp. V, Title 26, Sec. 1142, where they were denied a proper deduction which had not been considered by the Circuit Court of Appeals and was not within the scope of its mandate?

4. Are the petitioners entitled to a deduction of $173,000.00 attorneys' fees as an ordinary business expense?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS

The petitioners rely on the following reasons for the allowance of the writs of certiorari:

1. The Circuit Court of Appeals has decided, in a manner contrary to the intent of Congress as expressed in the statute, an important question of federal law, to-wit: the meaning and application of Section 1140(c)(2) of the Internal Revenue Code, 26 U. S. C. A., Sec. 1140, which question has not been, but should be, settled by this Court.

2. The decision of the Circuit Court of Appeals is apparently in conflict with applicable decisions of this Court holding that a taxpayer is entitled to deduct attorneys' fees as an ordinary business expense from net income after depletion.

Kornhauser v. *United States*, 276 U. S. 145.

Helvering v. *Speyer*, 296 U. S. 631.

Helvering v. *F. & R. Lazarus & Co.*, 308 U. S. 252.

Deputy v. *DuPont*, 308 U. S. 488.

CONCLUSION

Wherefore, your petitioners pray that writs of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings

of said Court had in the cases numbered and entitled on its docket, No. 2197, *Ralph W. Crews, Petitioner,* v. *Commissioner of Internal Revenue, Respondent;* No. 2198, *Robert E. Crews, Petitioner,* v. *Commissioner of Internal Revenue, Respondent;* No. 2199, *Amy Tresner, Petitioner,* v. *Commissioner of Internal Revenue, Respondent*; No. 2200, *Charles Crews, Petitioner,* v. *Commissioner of Internal Revenue, Respondent;* No. 2201, *Everett J. Crews, Petitioner,* v. *Commissioner of Internal Revenue, Respondent;* No. 2202, *Mary Willis, Petitioner,* v. *Commissioner of Internal Revenue, Respondent,* to the end that these causes may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment and order of said Court be reversed by this Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

RALPH W. CREWS, ROBERT E. CREWS, AMY TRESNER, CHARLES CREWS, EVERETT J. CREWS, MARY WILLIS,
Petitioners,

By ALBERT L. MCRILL,
J. D. LYDICK,
M. F. PRIEBE,
Their Attorneys.

Dated August 21, 1941.